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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/574,706

05/19/2006

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127429

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EXAMINER

DOAN, ROBYN KIEU

ART UNIT

PAPER NUMBER

3732

MAIL DATE

DELIVERY MODE

06/22/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/574,706

Applicant(s)

KIMURA ET AL.

Examiner

Robyn Doan

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2 and 6 is/are allowed.
- 6) ☒ Claim(s) 1 and 3-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 April 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 5/19/2006.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the tunnel" in line 10. There is insufficient antecedent basis for this limitation in the claim.

Claim 2 recites the limitation "the inner wall" in line 12 and "the tunnel" in line 18. There is insufficient antecedent basis for this limitation in the claim.

Claim 3 recites the limitation "the tube neck", "the engaging ring", "the fitting cylinder" in lines 2, 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 6 recites the limitation "the engaging ring" in line 3. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

Art Unit: 3732

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Miya (U.S. Pat. # 3,961,635) in view of Olson (IDS cited reference).

With regard to claim 1, Miya discloses a liquid-applying device (figs. 1 and 80 comprising a tubular container (1), a connecting/discharging unit (7) and a comb attachment (18), the connecting/discharging unit having a passage (11) and a fitting cylinder (6) which can be fitted to neck (3) of the tubular container, the comb attachment having a comb shaft (19) to be fitted to the connecting/discharging unit and also providing a row of teeth (26) disposed along one side of the comb shaft and extending laterally, the row of teeth having a pair of solid teeth (see fig. 8) at the front and rear of the row and the liquid applying teeth (26) sandwiched between the solid teeth, each of the liquid applying teeth having a hollow discharge path inside (27), which connect to a tunnel (21) of the comb shaft; the comb shaft being inclined from the central axis of the passage at a predetermined angle (see fig. 1). Miya fails to show each of the liquid applying teeth having a discharge port open at tip of each tooth and the solid teeth being taller than the liquid applying teeth. Olson shows a liquid-applying device (fig. 1) comprising a row of teeth (2) with a pair of solid teeth, wherein each of the liquid applying teeth (2) having a discharge port open at tip (10) of each tooth and the solid teeth being taller than the liquid applying teeth. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the particular solid and applying teeth as taught by Olson into the device of Miya in order to dispense the liquid directly to the scalp of the user.

Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miya in view of Olson as applied to claim 1 above, and further in view of Moe et al (U.S. Pat. # 4,279,527).

With regard to claim 3-5, Miya in view of Olson discloses the essential claimed invention as discussed above in claim 1 except for a locking ring being formed to project sideway from the upper end of the tubular neck and being engaged with the engaging ring disposed on the inner wall of the fitting cylinder, a valve unit having a valve cylinder being disposed inside the neck of the container and the comb shaft being inclined from the central axis of the passage at an angle of 30 degrees or less. Moe et al discloses a liquid dispenser (fig. 3) comprising a tubular container (10), a connecting/discharging unit (26) and a brush attachment (40), wherein a locking ring (at 18) being formed to project sideway from the upper end of the tubular neck (12) and being engaged with an engaging ring (at 30) disposed on the inner wall of a fitting cylinder (28) of the connecting/discharging unit; a valve (22) unit having a valve cylinder being disposed inside the neck of the container (see fig. 4). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the particular connecting/disconnecting unit and the valve unit as taught by Moe et al into the device of Miya in view of Olson for the intended use purpose. And it would have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the comb shaft being inclined from the central axis of the passage at an angle of 30 degrees or less, since it has been held that where the general conditions of a claim are

Art Unit: 3732

disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

### ***Allowable Subject Matter***

Claim 2 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Claim 6 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: none of the prior art of record taken alone or in combination shows a liquid applying device comprising all the features as recited in claim 2.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Cropton, Pyrozyk are cited to show the state of the art with respect to a hair applying device.

The drawings filed 4/5/2006 have been approved by the Examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robyn Doan/  
Primary Examiner  
Art Unit 3732